

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

BENJAMIN SHACAR,

Defendant

CRIMINAL No. 21-CR-30028-MGM

**GOVERNMENT’S RESPONSE TO “DEFENDANT’S REPLY TO GOVERNMENT’S
RESPONSE TO MOTION TO COMPEL DISCOVERY”**

For the reasons discussed in greater detail below, the government respectfully requests that this Court DENY the defendant’s request to consider the “Defendant’s Reply to Government’s Response to Motion to Compel Discovery” (hereinafter, “the Defendant’s Response”), or, in the alternative continue the hearing of the defendant’s motion and exclude the time between the currently scheduled hearing and the new date from the Speedy Trial Act calculation.

I. RELEVANT BACKGROUND AND PROCEDURAL POSTURE

The defendant stands charged by indictment in the above-captioned docket with ten counts of receipt of child pornography, in violation of 18 U.S.C. § 2252A(a)(2)(A), and one count of possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). The investigation precipitating these charges began in August 2019, when a foreign law enforcement agency (hereafter referred to as the “FLA”) advised the Federal Bureau of Investigation (the “FBI”) that a particular IP address, which was ultimately traced to the defendant, had accessed a website (the “target website”) that exclusively allowed users to access files depicting child sexual assault. This information was ultimately provided to Homeland Security Investigations Special Agent Daniel

Yon (the “affiant”). The affiant applied for and was granted a search of the defendant’s residence, which agents executed on March 24, 2021. The defendant was present at the home, waived his *Miranda* rights, and made several incriminating statements to agents, including that he had been visiting child pornography websites and that he used the dark web to access and obtain child pornography. During the search, agents located child pornography. The defendant was arrested and subsequently indicted for these offenses on April 15, 2021, [Dkt. No. 14].

On January 11, 2024, the defendant advised this Court that he intended to file a motion to compel discovery. On that date, this Court ordered the defendant to file the motion by March 4, 2024, ordered the government to respond by March 18, 2024, and scheduled a hearing to be held on April 4, 2024. The defendant timely filed his original “Motion to Compel Discovery” under seal on March 4, 2022 and the government responded, under seal, on March 18, 2022. The defendant filed the Defendant’s Response on March 29, 2024 at 7:54 PM. Prior to filing the Defendant’s Response, the defendant neither conferred with the government nor sought leave from this Court to file additional papers, as he must pursuant to L.R. 7.1(b)(3). The Defendant’s Response includes 19 exhibits, makes new arguments, and requests discovery not included in his “Motion to Compel Discovery.”

II. ARGUMENT

By filing the Defendant’s Response three business days prior to the scheduled hearing of his motion, the defendant has denied the government an adequate opportunity to thoughtfully review the 19 exhibits he attached and the several new arguments and requests for information that he makes for the first time. Because of this, and because he failed to obtain leave to file additional papers pursuant to L.R. 7.1(b)(3), the government requests that this Court not consider the exhibits attached to, and the new arguments and requests made in, the Defendant’s Response, or, in the

alternative, continue the hearing to a time after which the government has a sufficient opportunity to respond, or at least April 18, 2024.

The Government further requests that, should this Court grant the continuance, the time from April 4, 2024 until the date of the hearing of the defendant's Motion to Compel be excluded from the Speedy Trial Act calculation.

III. Conclusion

In sum, because the defendant did not seek leave to file additional papers and the timing of the filing of the Defendant's Response prejudices the government, the government asks this Court to deny the defendant's request to consider the arguments and requests for discovery that he makes for the first time in, and all of the exhibits he attaches to, the Defendant's Response. Alternatively, the government requests that hearing of the defendant's motion be continued to a date of at least April 18, 2024 in order to allow the government an opportunity to respond to the Defendant's Response.

Respectfully Submitted,

JOSHUA S. LEVY
Acting United States Attorney

By: /s/ Neil L. Desroches
NEIL L. DESROCHES
Assistant United States Attorney
United States Attorney's Office
300 State Street, Suite 230
Springfield, MA 01105
413-785-0398

Date: April 3, 2024

CERTIFICATE OF SERVICE

I, Neil L. Desroches, hereby certify that the foregoing was filed through the Electronic Court filing system (under seal, having been granted leave to do so on March 18, 2024) and will be sent electronically to the registered participants as identified on the Notice of Electronic filing.

Date: April 3, 2024

/s/ Neil L. Desroches

Neil L. Desroches

Assistant United States Attorney